IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

WEDNESDAY, THE 14TH NOVEMBER 2007 / 23RD KARTHIKA 1929

OP.No. 26133 of 1999(J)

PETITIONERS:
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1. DIL M. GOVINDU, MARATHUR HOUSE, KIZHUR, KUNNAMKULAM.

2. K.M. SETHUMADHAVAN NAIR, KUNNATH MELEDATHIL HOUSE, NHANGATTERI 679 311, PATTAMBI.

BY ADV. SRI.A.K.CHINNAN

RESPONDENTS:
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1. SALES TAX OFFICER, SHORANUR.

2. COMMISSIONER OF COMMERCIAL TAXES, THIRUVANANTHAPURAM.

3. EXECUTIVE ENGINEER, P.H. DIVISION, KERALA WATER AUTHORITY, SHORANUR.

4. KERALA WATER AUTHORITY, REPRESENTED BY THE MANAGING DIRECTOR, THIRUVANANTHAPURAM.

5. STATE OF KERALA REPRESENTED BY ITS SECRETARY TO GOVT.(TAXES), KERALA SECRETARIAT, THIRUVANANTHAPURAM.

R1, R2 & R5 BY G.P. SRI. K.P. PRADEEP
R3 AND R4 BY ADV. SMT.AMBIKA DEVI, SC, KWA

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 14/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP 44101 OF 1999 IN OP 26133 OF 1999

DISMISSED

14.11.2007 SD/-C.N.RAMACHANDRAN NAIR, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF CIRCULAR KWA HO/ACCOUNTS-6707/93 DATED 30.11.1998 ISSUED BY THE FOURTH RESPONDENT.

EXT.P2 TRUE COPY OF TENDER SCHEDULE NO. PH/SRR/D4-395/99 DATED 27.4.1999 ISSUED BY THE THIRD RESPONDENT.

EXT.P3 TRUE COPY OF TENDER SCHEDULE NO. PH/SRR/D4-7262/97/B1 DATED 8.3.1999 OF THE THIRD RESPONDENT.

EXT.P4 TRUE COPY OF LETTER DATED 6.9.1999 FILED BY THE PETITIONER TO THE FOURTH RESPONDENT.

EXT.P5 TRUE COPY OF LETTER DATED 9.9.1999 FILED BY K.M. SETHUMADHAVAN NAIR, CONTRACTOR TO THE FOURTH RESPONDENT.

EXT.P6 TRUE COPY OF OBJECTION STATEMENT FILED BY THE 2ND PETITIONER TO THE THIRD RESPONDENT DATED 9.9.1999.

RESPONDENTS' EXHIBITS: NIL.

TRUE COPY

P.S. TO JUDGE.

C.N. RAMACHANDRAN NAIR, J.

O.P. NO. 26133 OF 1999

Dated this the 14th day of November, 2007

JUDGMENT

Petitioners are contractors engaged by the Kerala Water Authority. O.P. is filed challenging deduction of sales tax by the Water Authority from their bills under Section 7B of the KGST Act. The case of the petitioners is that much of the turnover represented labour charges for excavation. However, counsel for the Water Authority submitted that contract payments are subject to deduction of sales tax. Since petitioners have not obtained and produced any certificate from Sales Tax Department for payment without deduction of tax, Water Authority is justified in deducting the tax. Moreover when tax deducted is paid to the department, petitioners can apply for refund of the same before the Officer before whom tax is remitted. O.P. is accordingly disposed of directing the petitioners to file returns under the KGST Act claiming whatever is the turnover that is exempt from sales tax for the assessing officer to consider the same and pass assessment orders giving credit for the remittances made by the Water

Authority and granting eligible refund to the petitioners. In the normal course, assessments should be completed by the Sales Tax Officer (works contract). Third respondent is directed to issue Form No. 21C giving details of payments within one month from the date of production of a copy of this judgment by the petitioners for the petitioners to claim refund from the Officer.

(C.N. RAMACHANDRAN NAIR)
Judge